

**NOTICE OF FINAL RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**PREAMBLE**

**1. Sections Affected**

R12-15-725

**Rulemaking Action**

Amend

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 45-105(B)(1) and 45-576(H)

Implementing statutes: A.R.S. § 45-576

**3. The effective date of the rules:**

Pursuant to A.R.S. § 41-1032(A), this rule becomes effective on \_\_\_\_\_.

**4. A list of all previous notices appearing in the *Register* addressing the final rule:**

Notice of Rulemaking Docket Opening: 15 A.A.R. 1338, August 14, 2009.

Notice of Proposed Rulemaking: 15 A.A.R.1332, August 14, 2009.

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

Developers of new subdivisions within an Active Management Area ("AMA") must obtain a determination of assured water supply ("AWS") from the Arizona Department of Water Resources ("Department") prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a determination of assured water supply is to demonstrate that any groundwater use is consistent with the management goal of the AMA. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural

economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

One method of demonstrating that groundwater use is consistent with the management goal of the AMA is through a mechanism for the extinguishment of grandfathered groundwater rights. When a grandfathered groundwater right is extinguished, the Department issues credits that can be used by a developer to meet the consistency with the management goal requirement for an AWS determination.

Prior to 2007, the existing AWS rules for the Pinal AMA allowed for the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA to remain the same each year, with no reduction over time. The AWS rules for the Pinal AMA were amended in 2007 to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered rights, depending on when the extinguishment occurs. The current version of R12-15-725 provides that the first reduction takes effect on January 1, 2010.

One of the major reasons for the 2007 amendment was that development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of Irrigation Grandfathered Rights (“IGFRs”) for extinguishment credits. Extinguishment of IGFRs, combined with rapid development, would lead to over-

allocation of unreplenished groundwater supplies. R12-15-725 therefore imposes a gradual reduction of the extinguishment credit allocation factor beginning in 2010.

Due to the downturn in the Arizona real estate market, development in the Pinal AMA has slowed dramatically. However, with the first reduction in the allocation factor approaching, several irrigation districts in the AMA have expressed concerns that some landowners within their districts may prematurely extinguish their IGFRs without actually developing their lands in order to maximize the extinguishment credits. Once the rights are extinguished, the lands could no longer be used for agricultural purposes. The irrigation districts are concerned that such actions will result in an economic hardship for the remaining IGFR holders within their districts because they will be required to pay a higher proportion of the fixed costs of the districts resulting from a loss in water sales, as those costs will be divided among fewer IGFR holders. Although not primary factor for this modification, the irrigation districts would also see an immediate increase to power costs for pumping groundwater as their electric providers would not be able to offset the loss in revenue from the lands with the extinguished IGFRs until those lands are developed sometime in the future.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department proposes to amend R12-15-725 to delay the effective date of the first reduction of the allocation factor until 2014. At that point the irrigation districts should be better equipped to absorb the economic impacts, and the rate

of development may begin to improve. The Department proposes to change the allocation factors for calendar years 2010 through 2016 as follows:

Year	Allocation Factor
2010	90 100
2011	88 100
2012	86 100
2013	84 100
2014	82 94
2015	80 88
2016	78 82

No changes are proposed for the allocation factors for calendar years 2017 and thereafter.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material;

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state;

Not applicable

9. The summary of the economic, small business, and consumer impact;

The rule amendment will have a positive short-term economic impact on those persons who will use groundwater to irrigate agricultural lands within irrigation districts in the Pinal AMA after 2009. The Department estimates that the cost savings for these persons during calendar year 2010 could be up to \$ 2.05 per acre-foot of groundwater used, with additional cost savings during calendar years 2011 through 2013. Additionally, the rule amendment will likely mitigate an otherwise negative economic impact on businesses within the Pinal AMA that sell farming materials, such as seed and equipment, and have a positive short-term economic impact on land developers within the Pinal AMA.

The rule amendment may have a negative short-term economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County and Maricopa County, as some lands within the AMA will remain in agricultural production for several more years, and therefore retain their lower agricultural tax status during those years. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment will likely result in more unreplenished groundwater withdrawals within the Pinal AMA, as some Irrigation Grandfathered Right (“IGFR”) holders will likely continue irrigating their lands with groundwater for several more years and some IGFR holders will receive more extinguishment credits between calendar years 2010 through 2016 than they would receive without the rule amendment. Although these additional unreplenished groundwater withdrawals will likely have some negative

economic impact on groundwater users and landowners within the general areas of the withdrawals by reducing the physical availability of groundwater supplies in those areas, the Department anticipates that the impact will be minimal.

**10. A description of the changes between the proposed rules and final rules:**

There are no changes between the proposed rules and the final rules.

**11. A summary of the comments made regarding the rule and the agency response to the them:**

Ron McEachern, General Manager for the Central Arizona Irrigation & Drainage District, submitted written comments in support of the rulemaking. The following persons provided comments in support of the proposed rule amendment at the oral proceeding on September 14, 2009:

Brian Betcher, General Manager, Maricopa Stanfield Irrigation & Drainage District

Paul Orme, Central Arizona Irrigation & Drainage District

Clifford Cauthen, General Manager, Hohokam Irrigation & Drainage District

Benjamin Belkin, Walton International Group (USA), Inc.

The Department appreciates the support for the proposed rule amendment.

Bill Collings, Vice Chairman, Pinal County Water Augmentation Authority, also expressed support for the proposed rule amendment at the September 14, 2009, oral proceeding, but suggested reducing the allocation factor to zero beginning in 2046, rather

than in 2055, to make up for the unreplenished groundwater use that may occur because of the proposed amendment. However, the Department has estimated the total volume of unreplenished groundwater use over 100 years (as a result of the rule amendment) to be less than 0.2% of the total groundwater in storage to a depth of 1,100 feet below land surface. Given the minimal volume of unreplenished groundwater use, in combination with the need to publish the rule amendment before 2010, when the allocation factor would otherwise change, the Department will not make Mr. Collings' proposed change at this time. However, if the Department later determines that the unreplenished groundwater use has increased substantially more than originally projected as a result of the rule amendment, the Department may consider amending the allocation factor in later years, as suggested.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No.

**15. The full text of the rules follows:**



**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

Section

R12-15-725. Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation

## **ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

### **R12-15-725. Pinal AMA – Groundwater Allowance and Extinguishment Credits**

#### **Calculation**

##### **A. No change**

1. No change
2. No change
  - a. No change
    - i. No change
    - ii. No change
    - iii. No change
    - iv. No change
    - v. No change
  - b. No change
  - c. No change
  - d. No change

##### **3. No change**

##### **B. No change**

1. No change
2. No change
  - a. No change
  - b. No change

3. Except as provided in subsection (B)(4) of this Section, in calculating the

extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

Year	Allocation Factor
<del>2007</del>	<del>100</del>
<del>2008</del>	<del>100</del>
<del>2009</del>	<del>100</del>
2010	<del>90</del> <u>100</u>
2011	<del>88</del> <u>100</u>
2012	<del>86</del> <u>100</u>
2013	<del>84</del> <u>100</u>
2014	<del>82</del> <u>94</u>
2015	<del>80</del> <u>88</u>
2016	<del>78</del> <u>82</u>
2017	76
2018	74
2019	72
2020	70
2021	68
2022	66
2023	64
2024	62
2025	60
2026	58
2027	56
2028	54
2029	52
2030	50
2031	48
2032	46
2033	44
2034	42
2035	40
2036	38
2037	36
2038	34
2039	32
2040	30
2041	28

2042	26
2043	24
2044	22
2045	20
2046	18
2047	16
2048	14
2049	12
2050	10
2051	8
2052	6
2053	4
2054	2
After 2054	0

4. No change

a. No change

b. No change

i. No change

ii. No change